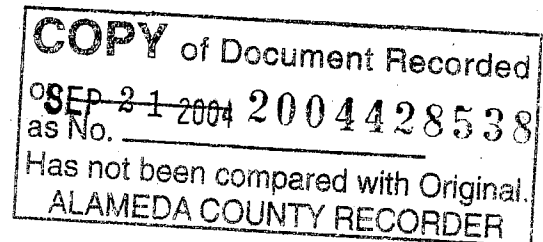


RECORDING REQUESTED BY:

FMEW, LLC
6114 La Salle Avenue
PMB 260
Oakland, California 94611



WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Northern California-Coastal Cleanup
Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

A Portion of Assessor's Parcel No. 016-1506-001-02
Former Myers Drum Reconditioning Facility
6549 San Pablo Avenue, Oakland, California

This Covenant and Agreement ("Covenant") is made by and between FMEW, LLC (the "Covenantor"), the current owner of property located at 6549 San Pablo Avenue in Oakland, County of Alameda, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260 in the groundwater beneath the Property. The Covenantor and the Department, collectively

referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.09 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is a portion of what was the former Myers Drum Reconditioning Facility (the "Facility"). The Facility was located in the area now generally bounded by 66th Street to the north, commercial/industrial buildings to the south, San Pablo Avenue to the east, and Vallejo Street to the west in Oakland, County of Alameda, State of California.

1.02. The Property is a portion of what was the former Myers Drum Reconditioning Facility (the Facility, Exhibit B). Myers performed drum reconditioning operations at the Facility from 1939 through 1991, resulting in the release of volatile organic compounds (VOCs), such as trichloroethylene, tetrachloroethylene and vinyl chloride, into the soil and shallow groundwater. The impacted groundwater was only found in the area of the Facility where waste sumps were formerly located (the Property, Exhibit A). The Facility was remediated in accordance with a Remedial Action Plan (RAP) prepared pursuant to Chapter 6.8 of Division 20 of the H&SC, under the oversight of the Department. The remedy selected in the RAP approved on May 26, 1996 consisted of soil cleanup to levels which would allow for residential use and groundwater cleanup to the maximum contaminant levels (MCLs). The soil at the Facility with contaminants exceeding residential cleanup levels was excavated and the excavated areas were backfilled with a clean imported soil in 1999. Future residential development on the Facility is planned. Although the groundwater cleanup goals have not been reached after various cleanup efforts since 1999, including pumping and treatment, recent groundwater sampling indicates that the levels of VOCs in groundwater have been significantly reduced to levels that are protective of public health and the environment. Additional pumping and treating of the groundwater is not expected to reduce the residual contamination any further. The Department has prepared an Explanation of Significant Differences (ESD), which changes the groundwater cleanup action portion of the 1996 RAP. The change ends the pumping and treating of

groundwater, but there will be ongoing groundwater monitoring at two down-gradient wells until the VOCs in groundwater decrease to their respective MCLs or the Department determines that monitoring can cease. Because the residual VOCs, hazardous substances, as defined in H&SC sections 25316 and 25260, still remain in groundwater above the MCLs beneath a portion of the Facility (the Property), the ESD provides that deed restrictions be required on the portion of the Facility where the groundwater contamination occurs, identified in this instrument as "the Property". The Department circulated the ESD for a 30-day public comment period and approved the final ESD on December 31, 2003. The ESD requires installing a monitoring well within the Property after completion of the Facility redevelopment. The operation and maintenance of the monitoring well and implementation of a groundwater monitoring program will be conducted in accordance with an Operation and Maintenance Agreement between IMACC, the parent company of Myers Container Corporation (the responsible party for implementation of the RAP and ESD), and the Department.

1.03. The ESD concluded that there is minimal human health risk associated with soil on the Facility since it was cleaned up to residential levels. The possibility for VOCs in groundwater beneath the Property to volatilize and move upward into buildings that may be constructed on the Facility was identified as the potential human exposure pathway of primary concern. A vapor intrusion risk analysis was performed and found that the human health risk levels from the residual VOCs in groundwater are on the order of 10^{-5} , which is within the acceptable risk range. However, the ESD also concluded that the restrictions in this Covenant were necessary to minimize the health risks from groundwater in the Property being used as a water supply source or from it being removed for the purpose of excavation dewatering done as part of construction activities on the Property.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their

successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property, and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a) (1) (C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon every portion of the Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department. A former Owner or Occupant is not liable, merely by virtue of its former status as an Owner or Occupant, for obligations accruing under the Covenant subsequent to its ownership or occupancy.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance of the Property , or any portion thereof, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) Extraction of groundwater for use as drinking water and for any other purposes other than groundwater monitoring or treatment.
- (b) Installation and/or pumping of water producing wells, including but not limited to water supply, irrigation, or private wells.
- (c) Removal and handling of groundwater for the purpose of excavation or construction dewatering without the procedures approved by the Department.

4.02. Non-Interference with Groundwater Monitoring System. Covenantor agrees that all uses and development of the Property shall preserve the integrity and physical accessibility of the groundwater monitoring system.

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Plan/Agreement between the Department and IMACC Corporation shall have reasonable right of entry and access to the Property, in accordance with a reasonable access agreement satisfactory to the Owner, for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Owner or Occupant modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. An Owner or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination or Modification.

- (a) An Owner or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.
- (b) An Owner or any other aggrieved person, may seek to modify the Restrictions as they apply to the Property, or any portion thereof, upon making written application to the Department. The respective Owner shall file

any modification of the Restrictions approved by the Department and the respective Owner for recording in accordance with Section 7.03 of this Covenant.

6.03. Term. Unless terminated or modified in accordance with Section 6.02 above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: FMEW, LLC
6114 La Salle Avenue
PMB 260
Oakland, California 94611

To Department: Department of Toxic Substances-Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Northern California-Coastal Cleanup
Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: FMEW, LLC, a California limited liability company

By: _____

Title: Felicia Woytak, Managing Member

Date: 6/15/04

Department of Toxic Substances Control

By: _____

Title: Barbara J. Cook, Chief

Northern California Coastal Cleanup Operations Branch

Date: 9/21/2004

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On this 15th day of JUNE, in the year 2004,

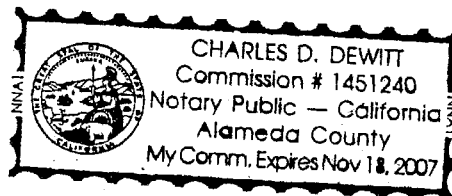
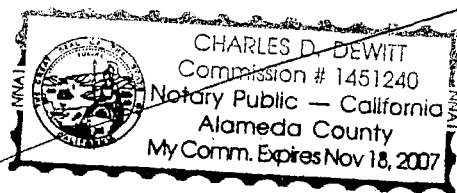
before me Charles D. Dewitt, personally appeared

Felicia Woyrak,

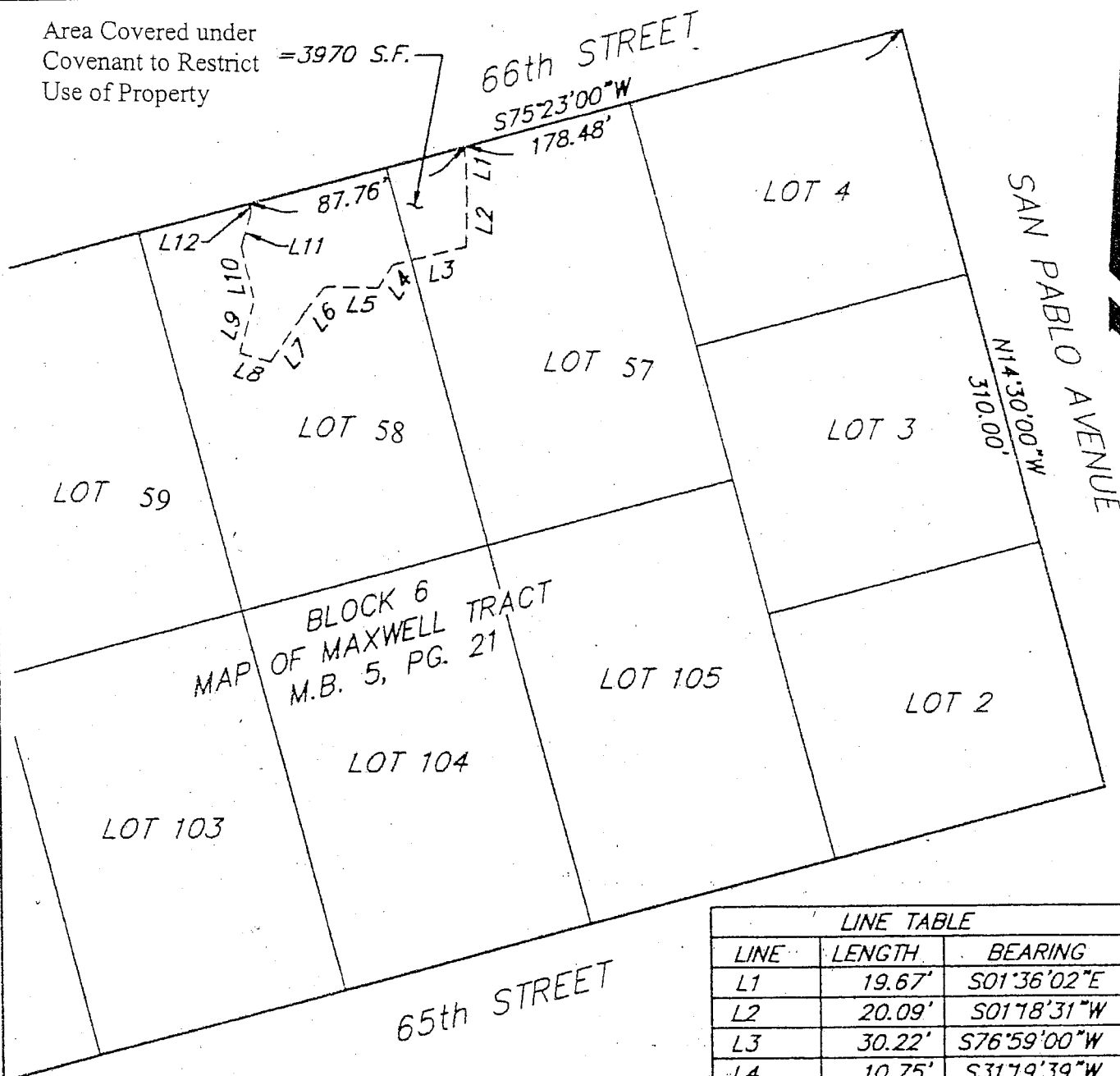
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Charles D. Dewitt



Area Covered under
Covenant to Restrict
Use of Property =3970 S.F.



LINE TABLE		
LINE	LENGTH	BEARING
L1	19.67'	S01°36'02"E
L2	20.09'	S01°18'31"W
L3	30.22'	S76°59'00"W
L4	10.75'	S31°19'39"W
L5	20.86'	N88°16'08"W
L6	13.08'	S38°40'38"W
L7	23.51'	S34°27'18"W
L8	12.32'	N73°54'36"W
L9	21.68'	N15°31'22"E
L10	21.88'	N12°37'48"W
L11	15.15'	N15°55'41"E
L12	2.53'	N23°05'31"W

W.O. 1582.02

PREPARED BY
RONALD GREENWELL & ASSOCIATES, INC.
LAND SURVEYING & DEVELOPMENT
10 SOUTH LAKE DRIVE, SUITE 1
ANTIOCH, CALIFORNIA 94509
TEL.(925) 778-0626
FAX(925) 778-7180

EXHIBIT "A"
COVENANT TO RESTRICT USE OF PROPERTY

OAKLAND

CALIFORNIA

DRAWN	HP	CHKD.	DA
APP'D.	RG		
SCALE	1"=60'		
DATE	1-8-04		
REV.		DATE	
SHEET	1	OF	1

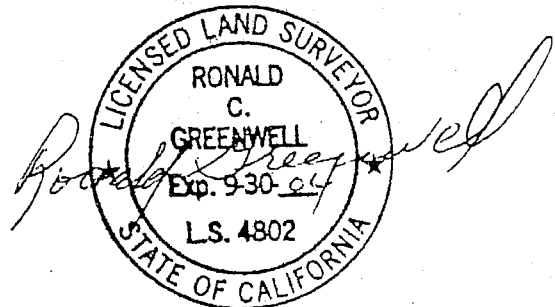
EXHIBIT "A"

LEGAL DESCRIPTION
FOR
LIMITS OF EXCAVATION ADJACENT TO
66TH STREET, OAKLAND, CA

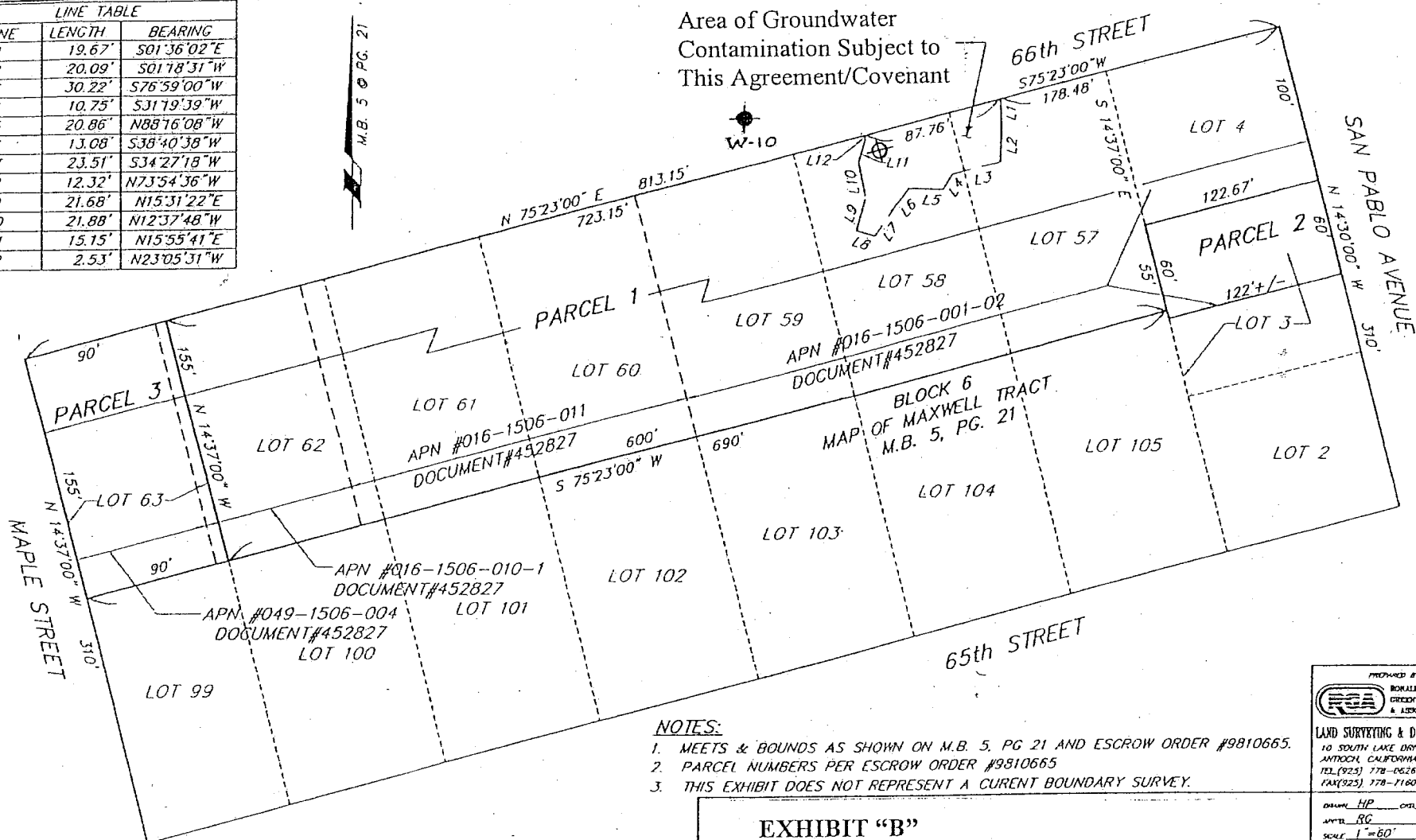
COMMENCING AT THE NORTHEAST CORNER OF LOT 4 AS SHOWN ON THE MAP OF MAXWELL TRACT RECORDED IN BOOK 5 OF MAPS AT PAGE 21 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, CALIFORNIA; THENCE SOUTH 75° 23' 00" WEST, 178.48 FEET ALONG THE NORTHERLY LINE OF LOT 4 AND LOT 5 TO THE TRUE POINT OF BEGINNING; THENCE THE FOLLOWING TWELVE COURSES:

SOUTH 01° 36' 02" EAST, 19.67 FEET
SOUTH 01° 18' 31" WEST, 20.09 FEET
SOUTH 76° 59' 00" WEST, 30.22 FEET
SOUTH 31° 19' 39" WEST, 10.75 FEET
NORTH 88° 16' 08" WEST, 20.86 FEET
SOUTH 38° 40' 38" WEST, 13.08 FEET
SOUTH 34° 27' 18" WEST, 23.51 FEET
NORTH 73° 54' 36" WEST, 12.32 FEET
NORTH 15° 31' 22" EAST, 21.68 FEET
NORTH 12° 37' 48" WEST, 21.88 FEET
NORTH 15° 55' 41" EAST, 15.15 FEET
NORTH 23° 05' 31" WEST, 2.53 FEET TO THE NORTHERLY LINE OF LOT 6 OF SAID MAXWELL TRACT; THENCE NORTH 75° 23' EAST, 87.76 FEET TO THE POINT OF BEGINNING, CONTAINING 3,970 SQUARE FEET.

END OF DESCRIPTION



LINE TABLE		
LINE	LENGTH	BEARING
L1	19.67'	S01°36'02"E
L2	20.09'	S01°18'31"W
L3	30.22'	S76°59'00"W
L4	10.75'	S31°19'39"W
L5	20.86'	N88°16'08"W
L6	13.08'	S38°40'38"W
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L8	12.32'	N73°54'36"W
L9	21.68'	N15°31'22"E
L10	21.88'	N12°37'48"W
L11	15.15'	N15°55'41"E
L12	2.53'	N23°05'31"W



NOTES:

1. MEETS & BOUNDS AS SHOWN ON M.B. 5, PG 21 AND ESCROW ORDER #9810665.
2. PARCEL NUMBERS PER ESCROW ORDER #9810665
3. THIS EXHIBIT DOES NOT REPRESENT A CURRENT BOUNDARY SURVEY.

- ⊙ existing monitoring well, W-10
- ⊕ proposed monitoring well

EXHIBIT "B"

Former Myers Drum Recycling Facility Site

OAKLAND

CALIFORNIA

PREPARED BY	
RONALD GREENWELL & ASSOCIATES, INC.	
LAND SURVEYING & DEVELOPMENT	
10 SOUTH LAKE DRIVE, SUITE 1	
ANTIOCH, CALIFORNIA 94509	
TEL. (925) 778-0626	
FAX (925) 778-7160	
DRAWN	HP
CHECKED	RA
APPROVED	RG
SCALE: 1"=60'	
DATE: 1-13-04	
REV.	DATE
SHEET	1 OF 1

W.O. 1582.02